

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 24

MAILED

JUN 19 1995

UNITED STATES PATENT AND TRADEMARK OFFICE

PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG KOWALK
and HANS-GEORG KELLER

Appeal No. 95-1728
Application 07/674,492¹

ON BRIEF

Before HAIRSTON, JERRY SMITH and FLEMING, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 3 through 6, 10 through 17 and 20 through 26. The two Amendments After Final (paper numbers 14 and 16) were entered by the examiner.

¹ Application for patent filed March 25, 1991.

The disclosed invention relates to a method and apparatus for transmitting cells over an asynchronous time-division multiplex system.

Claims 15 and 25 are illustrative of the claimed invention, and they read as follows:

15. A method of transmitting cells over an asynchronous time-division multiplex system comprising a plurality of auxiliary lines, each having a cell filter coupled thereto; a plurality of intersection buffers; a trunk line; and means for passing a cell from a selected filter to one of said intersection buffers for storage therein, when a path identification contained in said cell is allocated to said trunk line, in which cells supplied by said auxiliary lines and destined for said trunk line are transmitted at a predetermined interconnection element transmission rate, characterized by further comprising the steps of coupling an output buffer to outputs of said intersection buffers for delivering cells to said trunk line, and transmitting cells at least partly in parallel between said intersection buffers and said output buffer at an output loading transmission rate which is greater than said predetermined interconnection element transmission rate.

25. An asynchronous time-division multiplex transmission system for cells containing a path identification, comprising an interconnection element which transmits cells, supplied by auxiliary lines (6) and destined for a trunk line (8), at a predetermined interconnection element transmission rate, said element comprising a respective cell filter (7) connected to each of the auxiliary lines; and a respective intersection buffer (15) connected to each cell filter, said cell filter being arranged to pass a cell to the intersection buffer if the respective path identification is allocated to said trunk line, characterized in that said element comprises an output buffer (17), coupled to outputs of said intersection buffers, for delivering cells to said trunk line; and means for transmitting said cells at least partly in parallel between the intersection buffers and the output buffer, at an output loading rate which is

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greater than said predetermined interconnection element transmission rate.

The reference relied on by the examiner is:

Killat et al. (Killat)	5,067,124	Nov. 19, 1991
		(filed Sept. 28, 1989)

As indicated on page 3 of the supplemental answer, claims 3 through 6, 10 through 17 and 20 through 26 stand rejected under 35 U.S.C. 103 as being unpatentable over Killat.² In the paragraph bridging pages 3 and 4 of this answer, the examiner acknowledges that "Killat differs from applicant in that he does not disclose an output buffer and the data from the input buffer is not transmitted at an output loading rate (higher rate) or in at least partly parallel." From the teachings found in appellants' disclosure at page 3, lines 24 through 31, the examiner concludes that it would have been obvious to one of ordinary skill in the art to increase the output rate of the intersection buffer in Killat "so that the dwell time of the cells in the intersection buffer is reduced."

Reference is made to the briefs and the answers for the respective positions of the appellants and the examiner.

² On page 3 of the answer (paper no. 21), all of the claims on appeal were rejected under 35 U.S.C. § 103 as being unpatentable over Killat in view of another Killat patent (U.S. Patent No. 5,128,927). Inasmuch as this rejection was not repeated in the supplemental answer, we are treating it as having been withdrawn from the application.

OPINION

We have carefully considered the entire record before us, and we will reverse the 35 U.S.C. 103 rejection of claims 3 through 6, 10 through 17 and 20 through 26.

We have reviewed the portion of the specification pertaining to the Killat article, and we are uncertain as to what exactly is disclosed in this article based upon the sketchy disclosure in the specification. A decision as to whether the skilled artisan would have turned to the Killat article for the teachings and suggestions outlined in the rejection can not be made at this time based upon the sparse disclosure. More importantly, we are uncertain as to whether the appellants are making an acknowledgment since this portion of the specification is in the Summary of the Invention.

According to In re Hoch, 428 F.2d 1341, 166 USPQ 406 (CCPA 1970), a reference mentioned in the rejection should be made a part of the record. A copy of the Killat article should be requested from the appellants and entered into the record. Until that time, we can not make an intelligent decision as to the correctness of the examiner's position. For these reasons, the 35 U.S.C. 103 rejection of claims 3 through 6, 10 through 17 and 20 through 26 is reversed.

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DECISION

The decision of the examiner rejecting claims 3 through 6, 10 through 17 and 20 through 26 under 35 U.S.C. 103 is reversed.

REVERSED

KENNETH W. HAIRSTON
Administrative Patent Judge

Jerry Smith
JERRY SMITH
Administrative Patent Judge


MICHAEL R. FLEMING
Administrative Patent Judge

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